

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Charlottesville Division**

In re:  JENNIFER K. MARTIN,  Debtor.	CASE NO. 09-61944  CHAPTER 7
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JENNIFER K. MARTIN,  Movant,  v.  CAPITAL ONE BANK (USA), N.A.,  Respondent.	MOTION NO. 1
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**MOTION FOR CONTEMPT OR OTHER RELIEF FOR NONCOMPLIANCE  
WITH ORDER STAYING LEVY OR GARNISHMENT**

Debtor Jennifer K. Martin, by counsel, moves that the Court enter an Order holding Capital One Bank (USA), Inc., in contempt for its violation of this Court's Order Staying Levy or Garnishment for the following reasons:

1. That on June 19, 2009, debtor filed her Petition in this case.
2. That on June 22, 2009, this Court entered an Order Staying Levy or Garnishment in this proceeding directed to a garnishment instituted by creditor Capital One Bank (USA), N.A. against The Fauquier Bank where the debtor maintained an account. The garnishment proceeding was Case No. 09-00778 then pending in the General District Court for the City of Richmond.
3. That the Order provided that any "party holding wages or funds withheld under garnishment or levy of execution (post-petition) following the date the petition was filed shall pay to the debtor/trustee said funds and file with Counsel for the Debtor shown above a statement of all funds previously withheld from funds or otherwise due debtor under garnishment or other process pending and any other funds being withheld from debtor, and/or levies of property of the debtor, to-wit: BANK ACCOUNT garnished at THE FAUQUIER BANK by CAPITAL ONE BANK (USA) NA." The Court's Order further provided that the "party shall deliver to Counsel for the Debtor . . ., for further Order of the Court, the pre-petition withheld funds not later than the date of the §341 Meeting of Creditors on 8/07/2009."
4. That, upon information and belief, on or about June 19, 2009, before receiving notice of this Order, The Fauquier Bank remitted the remaining funds in the debtor's account to the General District Court for the City of Richmond. On June 25, 2009, the return date for the garnishment, the Respondent was given the funds that the bank had remitted.

5. That, despite the fact that it received these funds, totaling \$338.27, after the debtor's petition was filed, the Respondent has not complied with the Court's Order. It has not filed the required statement with counsel for the debtor and it has not delivered pre-petition withheld funds to counsel for the debtor.

WHEREFORE, your applicant prays that an Order be issued holding Capital One Bank (USA), N.A. in contempt for its failure to comply with the Court's June 15, 2009 Orders, requiring Capital One Bank (USA), N.A. to comply with the Court's Order, awarding the Debtor her attorneys' fees and expenses incurred in connection with this Motion, and awarding such other and further relief as the Court may deem just and proper.

**NOTICE OF HEARING ON MOTION**

Please take notice that on October 19, 2009, at 9:30 a.m., or as soon thereafter as counsel for the parties may be heard, debtor's counsel will ask that the Court hear and grant this Motion. The hearing will be held at the U.S. Courthouse, Room 200, 255 W. Main Street, Charlottesville, VA 22902.

**CERTIFICATE OF SERVICE**

Copies hereof are directed by email through the CM/ECF system to the Chapter 7 Trustee and by certified mail to Capital One Bank (USA), N.A. at the following addresses: c/o Hope King, 15000 Capital One Drive, Attn: 12077-0370, Richmond, VA 23238; P.O. Box 85167, Richmond, VA 23285; c/o Fran Steinberger, Court Agent, P.O. Box 85168, Richmond, VA 23286-8114; c/o Corporation Service Company, Registered Agent, P.O. Box 1463, Richmond, VA 23218.

DATE: October 1, 2009

Respectfully submitted,

JENNIFER K. MARTIN,

By counsel.

/s/ C. Lamar Garren

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